

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 23, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP938

Cir. Ct. No. 2016TR2149

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

DANE COUNTY,

PLAINTIFF-RESPONDENT,

V.

JUDITH ANN WALKER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
STEPHEN E. EHLKE, Judge. *Affirmed.*

¶1 KLOPPENBURG, P.J.¹ Judith Ann Walker appeals the order of the circuit court denying her motion to open the judgment. Because Walker fails to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

develop any argument that the court erroneously exercised its discretion in denying her motion, I affirm.

BACKGROUND

¶2 The few undisputed facts that matter are as follows. Walker was issued a citation for failing to stop at a stop sign in violation of WIS. STAT. § 346.46(1). Walker paid the citation and did not appear on the date printed on the citation. Approximately three weeks later, Walker moved the circuit court to open the judgment. In her motion, she provided a series of assertions relating primarily to the safety of the intersection at which the incident resulting in the citation was located. She stated that these assertions provided “the basis for [her] appealing the Jan. 22 traffic citation.” The circuit court denied Walker’s motion because she provided “no basis to reopen the judgment.” Walker appeals.²

DISCUSSION

¶3 If a person who has been issued a citation for violating a traffic regulation “fails to appear in court at the time fixed in the citation,” the circuit court shall “[d]eem the nonappearance a plea of no contest and enter judgment

² As a preliminary matter, the parties are reminded of their obligations to follow the rules of appellate procedure. Walker, appearing pro se, has submitted a one-page “brief” that does not contain the items required in WIS. STAT. § 809.19(1) and (2), and that does not cite the record or legal authority; I address her failure to develop her argument in the discussion section below. The County’s appendix contains material that is not part of the record, and a brief that cites that material that is not part of the record, contrary to WIS. STAT. § 809.19(1)(d) and (e), and (2)(a) (providing that facts and arguments be supported with references to the record, and that the appendix contain “portions of the record”). The County’s brief also excludes from its numbered pages the statement of the case and statement of the facts, contrary to WIS. STAT. § 809.19(8)(c). Finally, the County incorporates by reference one of the non-record documents in the appendix, contrary to the obligation to state the facts, based on citations to the record, in the brief itself. *See* WIS. STAT. § 809.19(1)(d).

accordingly.” WIS. STAT. § 345.37(1)(b). “If the defendant moves to open the judgment within 6 months after the court appearance date fixed in the citation, and shows to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise, or excusable neglect, the court shall open the judgment, accept a not guilty plea, and set a trial date.” WIS. STAT. § 345.37(1)(b). The burden is on the defendant to show that one of the stated grounds for relief exists. *Padek v. Thornton*, 3 Wis. 2d 334, 338, 88 N.W.2d 316 (1958).

¶4 WISCONSIN STAT. § 345.37(1)(b), like WIS. STAT. § 806.07, its counterpart addressing relief from judgments in civil matters, vests the circuit court with discretion to open judgments. See *Sukala v. Heritage Mut. Ins. Co.*, 2005 WI 83, ¶8, 282 Wis. 2d 46, 698 N.W.2d 610 (whether to grant relief from judgment under WIS. STAT. § 806.07 is “a decision within the discretion of the circuit court”). A circuit court’s discretionary decision will not be reversed unless the court erroneously exercised its discretion. *Id.* A discretionary decision contemplates a process of reasoning that depends on facts that are in the record, or reasonably derived by inferences from them, and a conclusion based on the application of the correct legal standard. *Id.*

¶5 The circuit court here denied Walker’s motion to open the judgment because she had not established any basis, including “mistake, inadvertence, surprise, or excusable neglect” to do so. The court explained, “Although Ms. Walker cites numerous reasons why she believes the intersection is unsafe, nothing in her motion justifies having this matter reopened by the court.”

¶6 On appeal, Walker asserts that she drove observantly and prudently, and reiterates some of the points she made to the circuit court about the safety of the intersection. However, Walker fails to explain why the circuit court

erroneously exercised its discretion when it found that she had failed to establish “mistake, inadvertence, surprise, or excusable neglect” so as to justify opening the judgment. Because Walker fails to develop any argument why the circuit court erred, her appeal fails. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court may decline to address arguments raised by appellant that do not comply with minimal briefing requirements).

CONCLUSION

¶7 For the reasons stated, the circuit court’s order denying Walker’s motion to open judgment is affirmed.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

